

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA

APPLICATION FOR CERTIFICATION FOR THE  
**TESLA POWER PROJECT**  
BY FLORIDA POWER AND LIGHT

**DOCKET NO. 01-AFC-21**  
DATA ADEQUATE  
JANUARY 9, 2002

**NOTICE OF EVIDENTIARY HEARINGS AND HEARING ORDER**

PLEASE TAKE NOTICE that the Committee will conduct formal evidentiary hearings on the proposed Tesla Power Project as follows:

**WEDNESDAY, SEPTEMBER 10, 2003**

1 p.m. – 8 p.m.

-and-

**THURSDAY, SEPTEMBER 11, 2003**

9 a.m. – 8 p.m.

VFW Post #1537 Meeting Hall  
430 West Grant Line Road  
Tracy, California

-and-

**FRIDAY, SEPTEMBER 12, 2003**

9 a.m. – 6 p.m.

Board Room  
Tracy Unified School District Education Center  
1875 West Lowell  
Tracy, California

and, if necessary-

**THURSDAY, SEPTEMBER 18, 2003**

Beginning at 10 a.m.

Hearing Room A  
California Energy Commission  
1516 9<sup>th</sup> Street  
Sacramento, California

**Teleconference:** A toll-free number is available for those who cannot attend the hearing on September 18 in Sacramento: **1-888-809-8967**. The passcode is Tesla. The conference leader is Susan Geftter.

Those who plan to call during the hearing in Sacramento must reserve a toll-free line by contacting Roberta Mendonca, the Energy Commission's Public Adviser, at 916-654-4489 or toll free in California at 1-800-822-6228, or email at [\[pao@energy.state.ca.us\]](mailto:pao@energy.state.ca.us).

The hearings will recess for lunch and dinner breaks as determined by the Committee.

This Notice includes a list of witnesses for each topic (Attachment A) and the remaining schedule for the proceeding (Attachment B).

## **BACKGROUND**

At the Prehearing Conference on July 30, 2003, Applicant, Staff, Intervenor Bob Sarvey and the San Joaquin Valley Unified Air Pollution Control District ("San Joaquin APCD") indicated they were ready to proceed to evidentiary hearings. Intervenor CARE filed a Prehearing Conference Statement but did not appear at the Prehearing Conference due to illness.

Several topics remain disputed and will be litigated at the evidentiary hearings. Applicant shall present live testimony on the topic of "project description" to set the context for the project proposal. In addition, Applicant and Staff shall provide witnesses on the topics of air quality, alternatives, biological resources, land use, water resources, and worker safety and fire protection. Applicant and Staff shall make witnesses available for cross-examination on those topics as well as the topics identified by Intervenor, which include compliance, cultural resources, hazardous materials management, public health, and socioeconomics. Staff shall also provide supplemental testimony in response to Committee questions discussed at the Prehearing Conference. See Attachment B, which sets deadlines for submitting written testimony, exhibits, and qualifications of proposed expert witnesses.

Representatives from the San Joaquin APCD and the Bay Area Air Quality Management District are requested to attend the hearings and provide testimony on air quality and public health. Representatives from the water agencies affected by the parties' water supply proposals are also encouraged to participate at the hearings. The parties shall provide conclusive documentation regarding the status of the Williamson Act contract cancellation process. Representatives from the Alameda County Fire Department and the City of Tracy Fire Department are requested to participate on the topic of Fire Protection.

## **EVIDENTIARY HEARING PROCEDURES**

The purpose of evidentiary hearings is to establish the factual record necessary for the Commission to reach a decision on the proposed project. The record is

developed by the presentation of oral and written testimony, as well as documentary evidence submitted by the parties. Testimony on undisputed topics may be submitted by declaration filed under penalty of perjury.

During evidentiary hearings, all parties (Applicant, Staff, and Intervenors) shall present evidence consisting of declarations or sworn testimony in person, and exhibits for each topic area. The parties must identify their witnesses and submit their testimony in writing prior to the hearing.<sup>1</sup> All witnesses who appear in person shall testify under oath or affirmation and will be subject to cross-examination by other parties.

A party sponsoring a witness at the hearings shall briefly establish the expert qualifications of the witness and ask the witness to summarize the prepared testimony before requesting that the testimony be moved into evidence. Relevant exhibits should be offered into evidence at that time. At the conclusion of a witness's direct testimony, the Committee will provide the other parties an opportunity for cross-examination, followed by redirect, and recross examination as appropriate. Multiple witnesses may testify as a panel, if warranted.

## **REQUIRED FILINGS**

**The parties shall file and serve copies of their prepared written testimony, proposed exhibits, and proposed exhibit lists no later than 5 p.m. on August 29, 2003. Rebuttal testimony and final exhibit lists shall be filed and served no later than 5 p.m. on September 5, 2003.**

The parties shall also send electronic copies of their written testimony and exhibit lists to the Proof of Service list and to the Hearing Officer via email. Any request for additions, changes, or substitutions to the hearing schedule shown in Attachment A should be included in the August 29<sup>th</sup> filings.

All proposed exhibit lists shall be submitted in the following format:

<b>EXHIBIT 1</b>	<u>Name of Exhibit</u> , [if letter from (name) to (name)], <u>Description of Exhibit</u> , dated _____. Docketed <u>date</u> . Submitted by <u>Applicant, Staff, or Intervenor (Name of Intervenor)</u> and received into evidence on September ____, 2003.
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<sup>1</sup> The parties must file written testimony in accordance with the schedule set forth in this Notice in order to present testimony at the hearings. Any direct testimony offered after the noticed dates may be subject to motions to strike by the other parties.

The parties shall number their exhibits as follows:

Exhibits 1-50	Applicant
Exhibits 51-70	Staff
Exhibits 71-100	Intervenor Bob Sarvey
Exhibits 101-120	Intervenor Mike Boyd (CARE)

All parties shall submit a copy of each of their exhibits, numbered in accordance with their proposed Exhibit Lists and collected in binders, to the Hearing Officer **no later than 5 p.m. on September 5, 2003.**

The rules of evidence pertaining to these hearings may be found at Sections 1212-1213 of the Commission's regulations. [Cal. Code Regs., tit. 20, §§ 1212, 1213; see also § 1702 (h)]. The regulations can be viewed on the Commission's Internet website at: [<http://www.energy.ca.gov/siting/title20/tofc.html>]

The Applicant has the burden of presenting sufficient substantial evidence to support the findings and conclusions required for certification of the site and related facilities. [Cal. Code of Regs., tit. 20, § 1748(e)].

## **PUBLIC PARTICIPATION**

Members of the public may participate at the evidentiary hearings and offer unsworn public comment on the topics addressed at the hearings. Public comments will be entered into the record of the proceeding and may be used to supplement or explain the evidence of record. Public comments by themselves, however, are not sufficient to support a finding of fact or a decision on an issue. Those desiring information on how to participate may contact Roberta Mendonca, the Energy Commission's Public Adviser, at 916-654-4489 or 1-800-822-6228 or email at: [[pao@energy.state.ca.us](mailto:pao@energy.state.ca.us)]

## **ADDITIONAL INFORMATION**

Technical questions concerning the project should be addressed to Jack Caswell, the Commission Staff's Project Manager at 916-653-0062 or email at: [[jcaswell@energy.state.ca.us](mailto:jcaswell@energy.state.ca.us)].

Questions of a legal or procedural nature should be directed to Susan Gefter, the Committee's Hearing Officer, at 916-654-3893 or email at: [[sgefter@energy.state.ca.us](mailto:sgefter@energy.state.ca.us)].

Media inquiries should be directed to Claudia Chandler, Assistant Executive Director for Media and Public Communications at 916-654-4989 or email at: [[energia@energy.ca.gov](mailto:energia@energy.ca.gov)].

If you have a disability and need assistance to participate in this event, contact Lourdes Quiroz at 916-654-5146 or e-mail at: **[[liquiroz@energy.state.ca.us](mailto:liquiroz@energy.state.ca.us)]**.

Information concerning the status of the project, notices, and other relevant documents, may be viewed on the Energy Commission's Internet webpage at: **[[www.energy.ca.gov/sitingcases/tesla](http://www.energy.ca.gov/sitingcases/tesla)]**.

Dated August 14, 2003, at Sacramento, California.

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JOHN L. GEESMAN  
Commissioner and Presiding Member  
Tesla AFC Committee

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ARTHUR H. ROSENFELD  
Commissioner and Associate Member  
Tesla AFC Committee

**ATTACHMENT A**  
**TOPIC and WITNESS SCHEDULE**  
(Topics not completed may be continued to another hearing day)

**WEDNESDAY, SEPTEMBER 10, 2003**  
**Beginning at 1 p.m.**

<b>Topic</b>	<b>Witnesses</b>	<b>Time*</b>
Project Purpose and Description	Applicant: Busa, McCloud Staff: Caswell	20 min Declaration
Facility Design	Applicant: Rausavljevich, McCloud Staff: Payne	Declaration Declaration
Power Plant Reliability	Applicant: Rausavljevich, McCloud Staff: Khoshmoshrab, Caswell	Declaration 10 min
Power Plant Efficiency	Applicant: Rausavljevich, McCloud Staff: Khoshmoshrab, Caswell	Declaration 10 min
Transmission System Engineering	Applicant: Mavis Staff: Guha, McCuen, Caswell	Declaration 10 min
Transmission Line Safety and Nuisance	Applicant: Mavis Staff: Odoemelam	Declaration Declaration
Geological/Paleontological Resources	Applicant: Stewart, Dirkin Staff: Pilling	Declaration Declaration
Cultural Resources	Applicant: Gorman Staff: Dougherty, Maniery, Reinoehl Intervenor CARE: Da Costa	Declaration Declaration 10 min
Hazardous Materials	Applicant: Moussavian Staff: Greenberg, Tyler Intervenor Boyd	Declaration Declaration 10 min
Waste Management	Applicant: Moussavian Staff: Greenberg	Declaration Declaration
Visual Resources	Applicant: Mudry Staff: Rivasplata, Birdsall, Knight	Declaration Declaration
Noise and Vibration	Applicant: Adams Staff: Brown Intervenor Boyd	Declaration Declaration 10 min
Traffic and Transportation	Applicant: Mudry, Busa Staff: Brown, Allen, Caswell	5 min 15 min
Compliance	Applicant: Busa Staff: Lewis, Caswell Intervenor Sarvey: Cross-examination	5 min 5 min 10 min
Alternatives	Applicant: Mudry, Busa Staff: Caswell Intervenor Sarvey: Cross-examination	5 min 10 min 15 min
Worker Safety and Fire Protection (at 6 p.m.)	Applicant: Moussavian, Staff: Greenberg, Tyler Intervenors: Cross-examination	30 min 20 min 20 minutes

\*Includes direct testimony and cross-examination; parties may yield time.

**ATTACHMENT A  
TOPIC and WITNESS SCHEDULE**

**THURSDAY, SEPTEMBER 11, 2003  
Beginning at 9 a.m.**

<b>Topic</b>	<b>Witnesses</b>	<b>Time*</b>
Soil and Water Resources	Applicant: Johnson, Hansmeyer, Osias, Jones, McCloud	3 hours
	Staff: Phinney, Kessler, Uhlman, Mediati, Bayley	3 hours
	Intervenor CARE: Powers	1 hour
Biological Resources	Applicant: Mudry	30 min
	Staff: Erichsen, York, Itoga, Jones-USFWS	30 min
	Intervenors CARE & Sarvey: Smallwood	1 hour
Complete topics from previous day of hearings	If necessary	If necessary

\*Includes direct testimony and cross-examination; parties may yield time.

**FRIDAY, SEPTEMBER 12, 2003  
Beginning at 9 a.m.**

<b>Topic</b>	<b>Witnesses</b>	<b>Time*</b>
Air Quality	Applicant: Stein	2 hours
	Staff: Birdsall	2 hours
	Intervenors: Cross-examination	1 hour
	BAAQMD: Jang	15 min
	SJV APCD: Sadredin	15 min
Public Health	Applicant: Stein	Declaration
	Staff: Greenberg	10 min
	Intervenors: Cross-examination	10 min
Socioeconomics	Applicant: Dos Santos, Busa	5 min
	Staff: Stennick, Caswell	5 min
	Intervenor CARE: Brown, Campbell	10 min
	Intervenor Sarvey: Cross-examination	10 min
Land Use	Applicant: Dos Santos, Busa	5 min
	Staff: Allen	10 min
	Intervenor Sarvey: Schneider	30 min

\*Includes direct testimony and cross-examination; parties may yield time.

**ATTACHMENT B  
COMMITTEE SCHEDULE FOR REMAINDER OF PROCEEDING**

**COMMITTEE SCHEDULE**

<b>EVENT</b>	<b>DATE</b>
All parties file prepared testimony, expert witness qualifications, relevant declarations, and exhibit lists	August 29, 2003
Applicant and Staff submit clarifications and supplemental testimony requested by the Committee	August 29, 2003
All parties file rebuttal testimony, updated exhibit lists, and all exhibits in binders to the Hearing Officer	September 5, 2003
Evidentiary hearings	September 10, 11, 12, and if needed, September 18, 2003
Parties file opening briefs	10 days after transcript receipt
Parties file reply briefs on contested issues	10 days after receipt of opening briefs
Committee issues Presiding Member's Proposed Decision (PMPD) and Notice of Committee Conference (30-day review)	<i>To Be Scheduled</i>
*Parties file written comments on PMPD	<i>To Be Scheduled</i>
*Committee Conference on PMPD; parties submit errata or other clarifications	<i>To Be Scheduled</i>
*Close of comment period on PMPD	<i>To Be Scheduled</i>
*Commission consideration of PMPD	<i>To Be Scheduled</i>

\* These events will be noticed separately.